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**SERVICE EMPLOYEES  
INTERNATIONAL UNION  
LOCAL 105**

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MICHAEL PRIMO  
RULE COORDINATOR  
OFFICE OF LABOR MARKET INFORMATION  
DIVISION OF LABOR STANDARDS AND STATISTICS  
633 17TH ST., SUITE 600, DENVER, CO 80202

RE: COMMENT IN FAVOR OF EXPANDING COVERAGE AND  
ELIMINATING EXCEPTIONS TO THE COLORADO MINIMUM WAGE  
ORDER (7 CCR 1103-1)

SUBMITTED VIA EMAIL TO: MICHAEL.PRIMO@STATE.CO.US

DEAR MR. PRIMO,

Local 105 of Service Employees International Union ("SEIU") is a worker rights organization and the collective bargaining agent for over 7,500 employees and their families across the State of Colorado. Our members are janitors, health care professionals, and security officers. We are frequently contacted by nonunion workers as well—industrious Coloradans seeking to organize and improve their workplace circumstances. We advocate for better wages, benefits, and for fair working conditions for our members and workers everywhere.

The Colorado Department of Labor and Employment ("CDLE") is seeking public comments on revising the Colorado Minimum Wage Order 35, 7 CCR 1103-1 ("Wage Order"). Specifically, the CDLE has solicited comments about expanding the potential categories of employees covered under the Wage Order and has requested suggestions for any other changes to the Wage Order the agency should consider. As explained in this comment, despite our union contracts, our members are routinely adversely impacted by the low wages in their industries and find themselves constantly struggling against the proverbial "race to the bottom." That is, nonunion companies who otherwise avoid minimum wage and overtime obligations artificially depress the costs of labor, hurting the competitiveness of well-meaning, higher-paying employers.

We have unique insight into the impact of low wages on workers and their families. We are an affiliate of the fastest growing union in North America with over 2.2 million members. In Colorado, we speak with thousands of nonunion workers every year who tell us about their daily struggles paying rent or satisfying bills. Many of these workers are employed full time. Their substandard wages are often the central reason they contact us and express interest in unionizing.

### **THE WORK OF SEIU LOCAL 105**

The Service Employees International Union Local 105 is the preeminent health care and property services workers' union in Colorado. For more than seven decades, we have provided workers a voice on the job, sought to restore fairness and balance to our economy, and empowered workers to fight for respect and dignity in their workplaces. Our union operates in a very diverse environment, including within industries in which racial minorities, immigrants, and female workers are typically most of the workforce. These industries include janitorial, healthcare, security, and airport services.

In addition to direct organizing and the representation of workers, SEIU Local 105 is one of the most politically engaged organizations in the state. Some campaigns spearheaded by SEIU Local 105 include the recent Fight for \$15 for airport workers, and we are currently agitating for comprehensive immigration reform.

### **WHY THE WAGE ORDER SHOULD BE EXPANDED AND EXEMPTIONS TO COVERAGE ELIMINATED**

The CDLE is tasked with protecting Colorado workers from “conditions of labor detrimental to their health and morals.” C.R.S. § 8-4-104. Due to the nature of its work, SEIU Local 105 routinely talks to working Coloradans about the issues that impact them and their families most. Here as elsewhere in the country, that usually means wages and hours. A New York Times article published this year summarized the impact of receiving a living wage on the health of workers: Living wages reduce depression and sleeplessness and lead to improved diet and weight loss. Living wages reduce unwanted pregnancies and child neglect cases, increase worker lifespans, and strengthen families and communities. In short, being paid a living wage doesn't just improve lives, it saves them.<sup>1</sup>

At SEIU Local 105, our members enjoy the “union difference.” Members enjoy far more generous benefits than non-unionized workers in the same industry. Importantly, we negotiate contracts for higher wages and more generous overtime than local law requires. For example, our janitors will all earn at least \$15 an hour by next year. Our healthcare industry workers earn hourly wages far in excess of this rate already. Because our members bring organized labor's power to bear on their contract negotiations, each contract clearly demarcates when overtime applies. Furthermore, because union members can easily invoke union grievance procedures, and if

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<sup>1</sup> Matthew Desmond, *The \$15 Minimum Wage Doesn't Just Improve Lives. It Saves Them*, New York Times (Feb. 21, 2019), available at <https://www.nytimes.com/interactive/2019/02/21/magazine/minimum-wage-saving-lives.html?fbclid=IwAR3YVbeJI7bZHMkhp6kz7YQMKRYXISY4Aohf4AWtHkGbiRU1nVWY0wkrEUY>.

necessary, take complaints all the way to arbitration, their rights under the contract are strictly and systematically enforced.

Because of our contracts, SEIU Local 105 members have a vastly different experience than many of the nonunion workers we encounter. In Sections 1 through 4 of the current Wage Order, categories of workers who are not expressly covered by the Order are excluded from minimum wage and overtime protections. This allows unscrupulous employers to pay poverty-level wages, leading to detrimental health outcomes for workers.

Earning a salary is not synonymous with earning a living wage. Thus, the exemption for salaried administrative employees, executives, supervisors, and professionals should be revised in the Wage Order, with the State of Colorado specifying the average hourly wages that an employer must pay, even if an employee is salaried, for the overtime exemption to apply, indexing that rate for inflation. This new overtime threshold should be phased-in over a longer period of time, as the Economic Policy Institute (EPI) has strongly encouraged CDLE. This phase-in would, for example, allow CDLE to issue “a rule increasing the threshold to 1.5 times the minimum wage in 2020, 1.75 times the minimum wage in 2021, 2.0 times the minimum wage in 2022, 2.25 times the minimum wage in 2023, and 2.5 times the minimum wage in 2024.”<sup>2</sup>

Additionally, the structure of the Order, with its limited definitions of covered industries in Section 2 and broad exemptions to the Wage Order in Sections 5 and 6, leads to public confusion about the scope of the Order’s coverage, making for easy exploitation by employers. Workers often simply do not know whether they are entitled to a minimum wage or overtime pay, and the Wage Order is largely indecipherable to anyone other than a handful of attorneys. This is of concern to SEIU Local 105 considering our diverse membership. There is significant research confirming the intersection between ethnicity—particularly Hispanic ethnicity—immigrant status, and higher rates of wage theft victimization. For example, the Southern Poverty Law Center (SPLC) conducted interviews of hundreds of Latino immigrant workers and found that 41% experienced wage theft, and 80% of Latino immigrants who had worked in Louisiana after Hurricane Katrina had wages stolen from them. *See UNDER SIEGE: LIFE FOR LOW-INCOME LATINOS IN THE SOUTH*, SPLC (March 31, 2009). Similarly, research done by a coalition of advocacy groups and the University of California, Santa Cruz, found that low-wage workers lose on average 15% of their wages every year to wage theft. *See SANTA CLARA COUNTY: WAGE THEFT REPORTS* (2014). The study found that immigrant status is the strongest predictor of wage theft. Another study, in which academics from nearly a dozen universities interviewed over 4,300 low-wage workers in Chicago, Los Angeles, and New York City, found that Latino workers were almost 13% more likely than any other racial/ethnic group to report regular time wage theft, nearly five times more frequently than white workers. Although black foreign-born workers also suffered a high rate of wage theft (30%), Latino foreign-born workers suffered the most wage theft of any racial/ethnic group at 35%. *See NATIONAL EMPLOYMENT LAW PROJECT, BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA’S CITIES* (2009). Lack of legal work authorization further compounds the problem. Rates were as high as

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<sup>2</sup> David Cooper, *Updating Colorado’s overtime salary threshold*, Economic Policy Institute (Aug. 16, 2019), available at [epi.org/173617](https://epi.org/173617).

37% amongst undocumented workers. Foreign-born female workers without work authorization experienced regular-time wage theft at an astonishing 47%. The numbers were worse—more than twice as bad—when participants for all racial/ethnic groups reported on overtime wage theft. Insight of these problems, SEIU Local 105 also proposes that the Colorado Wage Order should include a Worker Education component or requirement that will greatly help all workers, union and nonunion, to know their rights in order to fight workplace abuse and illegal behavior by bad actors.

On top of the many employers intentionally exploiting the confusing language and ambiguous exemptions of the Wage Order, some employers may also be genuinely confused about the scope of worker protections found in the Wage Order, leading to frequent inadvertent misclassification of workers. As a result, we at SEIU Local 105 have oftentimes found nonunion employees working two or even three jobs, and laboring fifty, sixty, or even seventy hours a week, just to put food on the table or pay the rent. Not surprisingly, such unsustainable hours threaten workers' health, safety, and relationships. In contrast, our fieldwork shows that our members—who routinely receive overtime pay—are less likely to face eviction for failing to pay rent than their nonunion counterparts, and more likely to own their homes. Our members are also more likely than their nonunion counterparts to send their children to college, providing their children greater opportunities to escape poverty and improve their socio-political and economic situation in the country.

SEIU Local 105 also has unique insight into the impact of minimum wage and overtime exemptions on well-meaning companies. Low wages result in high worker turnover and the burgeoning cost of training employees. But even more importantly, companies that do not pay minimum wages or overtime to their workers—whether by legal exemption or unlawful acts—make it hard for companies that want to comply with their legal obligations to compete. This is true for many of the industries in which SEIU Local 2015 is active, including the private security and janitorial sectors. Companies with which SEIU Local 105 has had union contracts in the past have nevertheless lost bids for job sites to competitors who pay subpar wages. This further creates a race to the bottom, as wage gains made by union members are undercut, creating pressure to decrease wages in future negotiations. The interest in ensuring that certain industries or companies that pay poverty-level wages are not rewarded for this behavior is an interest shared by unions and unionized companies alike. Absent pressure on non-unionized companies and industries to improve wages and without raising the proverbial floor from which all negotiations start, union members will continue to find it difficult to negotiate meaningful wage increases that are commensurate with increases to the cost of living.

## **CONCLUSION**

Restructuring the Wage Order to more clearly cover all employees unless they are expressly exempted will help reduce the rampant misclassification of low wage employees as exempt from minimum wage and overtime protections. In a similar vein, a minimal threshold for exempting professional employees in Section 5 of the Wage Order. SEIU Local 105 suggests that no professional employee should be exempt from overtime unless their regular hourly wage rate is 2.5 times the minimum wage rate in the state, and that such changes are implemented during a

longer phase-in process. These interventions are essential to ensuring that the economic boom in Colorado's economy are shared by all. The economy is currently unfairly tipped in favor of millionaires, billionaires, and stockholders, with workers seeing very little economic gains even though these immense profits have resulted from their hard labor.

Sincerely,

A handwritten signature in black ink, appearing to be 'Andy Jacob', written on a light gray rectangular background.

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Andy Jacob  
Political Director  
SEIU Local 105